STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0964

Elm Creek Courthome Association, Inc.,
Appellant,

vs.

State Farm Fire and Casualty Company,
Respondent.

Filed February 14, 2022
Affirmed in part, reversed in part, and remanded
Connolly, Judge

Hennepin County District Court
File No. 27-CV-19-21441

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Considered and decided by Cochran, Presiding Judge; Connolly, Judge; and Smith, John, Judge.*

SYLLABUS

A "written notice of claim" sufficient to trigger the accrual of preaward interest according to Minn. Stat. § 549.09, subd. 1(b) (2020), must be sent from the claimant to the opposing party.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

OPINION

CONNOLLY, Judge

Appellant and cross-respondent Elm Creek Courthome Association, Inc. (Elm Creek) seeks to reverse a grant of summary judgment relating to an insurance appraisal award providing for the use of existing undamaged siding to repair damaged siding on the same property. Respondent and cross-appellant State Farm Fire and Casualty Company (State Farm) in turn appeals the district court's decision granting preaward interest to Elm Creek. Because the insurance policy does not preclude the use of undamaged siding for repairs, we affirm in part, and because the amount of preaward interest was incorrectly calculated we reverse in part, and remand.

FACTS

Elm Creek is a residential common-interest community of 21 buildings in Champlin, Minnesota. A hailstorm damaged the buildings in June 2017. Elm Creek reported the loss to State Farm, its insurer. The record is silent as to how Elm Creek reported its loss. There is no written document in the record from Elm Creek to State Farm reporting the loss. However, State Farm generated a notice-of-loss report on September 20, 2017, and sent the notice to Elm Creek.[1] State Farm inspected the buildings a month later, estimated the covered damages amounted to $187,978.99, and issued a net payment for $75,530.08.

[1] The notice-of-loss report generated by State Farm stated: "We received a report of a loss occurring on June 11, 2017. A member of our team, ISAAC BREWER, will review the claim and contact you if we need additional information."

Elm Creek requested a second inspection in 2018. In June 2019, Elm Creek hired its own public adjustor to provide an independent estimate. This adjustor estimated Elm Creek suffered a loss of $2,869,634.10 due to the June 2017 hailstorm. After receiving this estimate, Elm Creek served State Farm with a complaint alleging breach of the insurance contract and seeking declaratory judgment as to the extent of the policy's coverage.

Elm Creek also demanded an appraisal at that time. The appraisal panel issued its decision on October 11, 2019. It awarded Elm Creek $622,839.72 in replacement cost value (RCV) of the losses, or $582,519.72 in actual cash value (ACV) of the losses. The panel specifically stated that "[s]iding was covered on 4 buildings due to match." It also provided for "harvesting from the other 4 buildings" for damages to the siding on 10 additional buildings. State Farm issued a check to Elm Creek for $486,989.64[2] the next month.

Elm Creek filed a motion to vacate the appraisal award and a motion seeking declaratory relief in January 2020. Elm Creek argued that the policy does not allow for "harvesting,"[3] that the appraisal panel reached matters outside the scope of its authority, and that Elm Creek is entitled to full siding replacement for all 21 buildings. State Farm opposed this motion. In June, the district court determined that Elm Creek's motions and

[2] This figure equals the $582,519.72 ACV appraisal award minus the $75,530.08 payment from October 2017 and the $20,000 policy deductible.

[3] Elm Creek's adjustor defined "harvesting" as "a term of art in the construction and insurance industry used to describe the process of reusing materials from one location or structure to repair portions of a separate location or structure."

State Farm's opposition to them were to proceed as "cross motions for summary judgment as to the procedural validity of the appraisal award and whether the award is in violation of the terms of the insurance contract."[4]

The district court issued its summary judgment decision in July 2020. It denied Elm Creek relief, concluding that "harvesting" is a method of repair that did not violate the terms of the insurance contract. Accordingly, it granted summary judgment in State Farm's favor. But it also instructed the parties to identify any remaining issues before it directed entry of final judgment.

Elm Creek identified the amount of preaward interest that may be due as an outstanding issue. The district court issued its order on preaward interest in June 2021. It determined Elm Creek was the prevailing party in the appraisal and concluded that the September 20, 2017, notice-of-loss report generated by State Farm constituted a written notice of claim by Elm Creek to trigger the accrual of preaward interest. It awarded Elm Creek $109,510.42 in interest calculated based on the RCV appraisal award amount. The district court also directed entry of final judgment on both the July 2020 summary judgment order and the June 2021 order for preaward interest.

Elm Creek appeals the denial of its claims for declaratory relief. State Farm cross-appeals the award of preaward interest to Elm Creek.

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[4] The district court had previously dismissed Elm Creek's motion to vacate the appraisal award because it determined that insurance appraisals are not arbitration proceedings subject to the Minnesota Uniform Arbitration Act pursuant to *Oliver v. State Farm Fire & Cas. Co.*, 939 N.W.2d 749 (Minn. 2020).

ISSUES

I. Is State Farm entitled to summary judgment that the appraisal award was consistent with the terms of the insurance policy?

II. Is Elm Creek entitled to $109,510.42 in preaward interest?

ANALYSIS

I. The appraisal award was consistent with the terms of the insurance policy and State Farm is entitled to summary judgment.

Elm Creek challenges the district court's award of summary judgment to State Farm. A district court "shall grant summary judgment" if "there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. We review a grant of summary judgment de novo to determine if the district court properly applied the law and if genuine issues of material fact preclude summary judgment. *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). And the "interpretation of an insurance policy and the application of the policy to the undisputed facts" is a question of law reviewed de novo. *Com. Bank v. W. Bend Mut. Ins. Co.*, 870 N.W.2d 770, 773 (Minn. 2015). Upon review, we conclude that the district court did not err by granting summary judgment to State Farm.

A. The insurance policy does not plainly prohibit "harvesting."

Elm Creek's primary challenge to the district court's decision is that the policy's plain language prohibits using "harvesting" to determine the amount of loss. We review the interpretation of an insurance policy de novo and according to general contract principles. *Thommes v. Milwaukee Ins. Co.*, 641 N.W.2d 877, 879 (Minn. 2002). A contract is to be interpreted as a whole "with meaning given to all of its provisions." *Am.*

Nat'l Bank of Minn. v. Hous. & Redevelopment Auth., 773 N.W.2d 333, 337 (Minn. App. 2009). We interpret an insurance policy to "ascertain and give effect to the intentions of the parties." *King's Cove Marina, LLC v. Lambert Com. Constr. LLC*, 958 N.W.2d 310, 316 (Minn. 2021) (quotation omitted). We determine the parties' intent from "the plain language of the instrument itself." *Storms, Inc. v. Mathy Constr. Co.*, 883 N.W.2d 772, 776 (Minn. 2016) (quotation omitted). If the language is "clear and unambiguous," we "enforce the agreement of the parties as expressed" in the contract. *Id.* In other words, we do not "rewrite, modify, or limit" the effect of an unambiguous provision "by a strained construction." *Id.* (quotation omitted).

The relevant policy provisions are those concerning the conditions for "Loss Payment:"

> **e. Loss Payment**
> In the event of loss covered by this policy:
> **(1)** At our option, we will either:
> **(a)** Pay the value of lost or damaged property;
>
> . . . .
>
> We will determine **e.(1)(a)** in accordance with the applicable terms of Paragraph **e.(4)** . . . .
>
> **(4)** . . . we will determine the value of Covered Property as follows:
> **(a)** At replacement cost without deduction for depreciation, as of the time of loss, subject to the following:
> **i.** We will pay the cost to repair or replace, after application of the deductible and without deduction for depreciation but not more than the least of the following amounts:
>
> . . . .

> **2)** The cost to replace, on the described premises, the lost or damaged property with other property of comparable material, quality and used for the same purpose
>
> . . . .

Elm Creek first focuses on "depreciation." The plain meaning of "depreciation" is "[a] decrease or loss in value, as because of age, wear, or market conditions," or "[a]n allowance made for a loss in value of property." *The American Heritage Dictionary of the English Language* 488 (5th ed. 2018). Because "harvesting" is the "process of reusing materials from one location or structure to repair portions of a separate location or structure," Elm Creek contends that the policy prohibits "harvesting" because it necessarily uses aged materials to make repairs. This interpretation is a strained construction that does not give effect to all the policy's provisions.

Whenever "depreciation" is used in the policy, it is used in the context of the phrase "without deduction for depreciation." The plain meaning of "deduction" is "[t]he act of deducting; subtraction," or "[a]n amount that is or may be deducted." *Id.* at 473. These "Loss Payment" provisions thus merely provide a method of accounting that disclaims subtracting the property's inherent loss of value over time from the amount to be paid as the RCV of the property. As the plain meaning of "without deduction for depreciation" does not relate to any method of making repairs, it does not operate to prohibit "harvesting."

Elm Creek also argues that because the "Loss Payment" provisions require the use of "other property" to replace "lost or damaged property," re-using existing materials from the same property to make repairs is contrary to the policy's plain language. But construing

these provisions as a whole reveals that "other property" in its proper context does not mandate the use of brand-new materials in all repairs. The plain meaning of "other" includes "[d]ifferent from that or those implied or specified." *Id.* at 1249. In context of the "Loss Payment" provision, "other property" merely designates the materials used for repairs as different from "the lost or damaged property." Because "harvesting" contemplates using existing but undamaged materials to repair the "lost or damaged property," it does not fall afoul of the "other property" provision.

Construing the "Loss Payment" provisions to prohibit "harvesting" would unduly restrict acceptable methods to repair or replace lost or damaged property based on a strained construction of "without deduction for depreciation" and "other property." We therefore decline the invitation to "rewrite, modify, or limit" the policy as Elm Creek proposes and we conclude that the policy's plain language does not prohibit "harvesting" as a method of repair. *See Storms, Inc.*, 883 N.W.2d at 776.[5]

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[5] Elm Creek also argues that "the doctrine of reasonable expectations" applies to prohibit "harvesting," because "harvesting" was not within its reasonable expectations at the time it entered into the policy. But the doctrine is applied "to provide coverage where the actual language interpreted as the insurance company intended would have proscribed coverage." *Atwater Creamery Co. v. W. Nat'l Mut. Ins. Co.*, 366 N.W.2d 271, 278 (Minn. App. 1985); *see also Reinsurance Ass'n of Minn. v. Johannessen*, 516 N.W.2d 562, 565-66 (Minn. App. 1994) ("The doctrine is generally applied . . . where legal technicalities would defeat coverage which the insured reasonably believed was in place."). Application of the doctrine thus depends upon a dispute over coverage. *See Atwater Creamery*, 366 N.W.2d at 278 ("Properly used, the doctrine will result in coverage in some cases and in no coverage in others."). There is no dispute that the losses Elm Creek suffered in the June 2017 hailstorm are covered losses under the policy. Moreover, the doctrine does not apply in the absence of evidence "that the insured was actually misled." *Reinsurance Ass'n*, 516 N.W.2d at 566. Elm Creek provided no evidence that it sought and was misled into believing it purchased a policy that excluded "harvesting" as a means of repair. Accordingly, the doctrine of reasonable expectations does not apply.

B. The appraisal panel did not exceed the scope of its authority.

Elm Creek next contends that the appraisal panel exceeded its authority by re-evaluating matters that were not in dispute, and because it made a coverage determination relating to "harvesting." "The scope of appraisal is limited to damage questions while liability questions are reserved for the courts." *Quade v. Secura Ins.*, 814 N.W.2d 703, 706 (Minn. 2012). The policy provides for appraisal where there is disagreement "on the value of the property or the amount of loss." According to Elm Creek, there was an agreement between the competing estimates that State Farm would cover overhead and profit and sales tax, as well as full replacement of siding for one of the buildings. Elm Creek argues that because both estimates included amounts for these issues, there was no dispute on these issues for the appraisal panel to decide. And because the appraisal panel included amounts for these items in its award, Elm Creek contends it exceeded the scope of its authority. But there is no evidence of any alleged agreement in the record. The purported agreements are that both State Farm and Elm Creek included coverage for contractor overhead and profit in their estimates, and that both estimates provided coverage for losses to the building at issue. However, there was significant disagreement between the parties as to the amount of overhead and profit that would be covered and the amount of covered loss for the building at issue. Because there remained disagreement as to the amount of loss, the appraisal panel acted within its authority. *See id.* (stating appraisers generally "have authority to decide the amount of loss" (quotation omitted)).

Nor did the panel exceed its authority by making a decision relating to harvesting. Appraisers generally "may not construe the policy or decide whether the insurer should

pay." *Id.* (quotation omitted). The permissibility of "harvesting" is not a coverage determination. It is undisputed that the siding was covered under the policy; the only dispute is over the cost to repair or replace it. The cost to do so necessarily depends on the means of repair or replacement. And as Elm Creek's adjustor explained, "harvesting" is a means of repair. The appraisal panel was thus within its authority to consider "harvesting" in the context of determining "[t]he cost to replace, on the damaged premises, the lost or damaged property with other property of comparable material, quality and used for the same purpose."

C. Elm Creek has not demonstrated it was deprived of due process.

Elm Creek contends the appraisal panel deprived Elm Creek of due process by making determinations on the use of "harvesting," an issue on which Elm Creek did not have an opportunity to present evidence or argument. Both Elm Creek and State Farm were entitled "to be heard and to an opportunity to present evidence" at the appraisal. *Dufresne v. Marine Ins. Co.*, 196 N.W. 560, 561 (Minn. 1923). The *Dufresne* court determined due process was not provided to the insured where he "did not waive notice of the hearing, and . . . he expected and intended to be present and give evidence, but was prevented from attending and presenting his evidence because of lack of notice and knowledge of the meeting of the appraisers." *Id.* at 562. That was not the case here. Elm Creek had notice of the appraisal, knew that State Farm would argue for a lower cost to repair or replace than Elm Creek believed was necessary, submitted relevant evidence on replacement cost, and attended the appraisal. This satisfies the due process requirements of "notice and an opportunity to be heard." *Id.* at 561.

Moreover, the appraisal panel did not violate Elm Creek's due process rights by exceeding the scope of the appraisal. The scope of the appraisal was limited to questions of damage and the amount of loss. *Quade*, 814 N.W.2d at 706. And the appraisers were entitled to "make a personal examination of the premises and of the property," but could not "base the award upon their personal knowledge to the exclusion of pertinent evidence offered by the parties." *Am. Cent. Ins. Co. v. Ramsey County*, 147 N.W. 242, 243 (Minn. 1914). Both Elm Creek and State Farm were provided the opportunity to present evidence as to the amount of the loss. Both parties availed themselves of this opportunity and provided their respective estimates of loss, photos, and other evidence. Given that the panel was provided this evidence, its award cannot be said to have been made "upon . . . personal knowledge to the exclusion of pertinent evidence offered by the parties." *Id.*

Because the district court did not err by concluding the policy did not prohibit "harvesting," the appraisal panel did not exceed the scope of its authority, and Elm Creek was afforded due process, it was not error to award summary judgment to State Farm on Elm Creek's claims related to the insurance policy.

II. The September 2017 notice-of-loss report generated by State Farm was not a written notice of claim by Elm Creek sufficient to trigger the accrual of preaward interest and the amount of preaward interest must be recalculated.

The district court awarded Elm Creek preaward interest under Minn. Stat. § 549.09, subd. 1(b) (providing for "preaward . . . interest on pecuniary damages" from the earliest of the "commencement of the action or a demand for arbitration, or the time of a written notice of claim."). Preaward interest decisions "are reviewed de novo." *Blehr v. Anderson*, 955 N.W.2d 613, 618 (Minn. App. 2021).

A. The September 2017 notice-of-loss report generated by State Farm does not constitute a written notice of claim by Elm Creek.

The district court determined the September 2017 notice-of-loss report generated by State Farm was a written notice of claim sufficient to "commence[] the accrual of preaward interest." We recently addressed what constitutes "written notice of claim" as an issue of first impression in *Blehr*. 955 N.W.2d at 619. The document at issue in *Blehr* was a letter from an injured party's attorney sent to an insurer. *Id.* at 617. We determined a written notice "must be sufficient, in light of the circumstances known to the noticed party, to allow the noticed party to determine its potential liability from a generally recognized objective standard of measurement" and that the letter satisfied these requirements. *Id.* at 622 (quotations omitted). We are now tasked with determining whether a notice-of-loss report generated solely by an insurer constitutes a "written notice of claim" by the insured under Minn. Stat. § 549.09, subd. 1(b). We conclude that it does not.

State Farm contends the plain language of Minn. Stat. § 549.09 prevents the notice-of-loss report from operating as a written notice of claim because it is not a demand for payment from Elm Creek to State Farm. We agree. "Statutory interpretation . . . is a question of law which we review de novo." *Jepsen ex rel. Dean v. County of Pope*, 966 N.W.2d 472, 482 (Minn. 2021). Because the parties do not contend the statute is ambiguous, we look to the statute's plain language to determine its meaning. *Alerus Fin., N.A. v. Aaron Carlson Corp.*, 966 N.W.2d 253, 256 (Minn. App. 2021). At issue here is whether the plain meaning of "written notice of claim" requires that a document be sent from the claimant to the noticed party. The plain meaning of "notice" includes "[a] formal

announcement, notification, or warning." *American Heritage, supra,* at 1206. And the plain meaning of "claim" includes "[a] demand for something as rightful or due" and "[a] demand for payment in accordance with an insurance policy or other formal arrangement." *Id.* at 340. A written notice of claim, therefore, is a formal announcement or warning of a demand for payment and must be in writing. A party responsible for issuing payment cannot announce a demand for payment to the party making the claim. In other words, only the claimant may demand payment from the noticed party under the plain meaning of "written notice of claim." Accordingly, a "written notice of claim" necessarily requires a written notice be sent from the claimant to the party from whom the claimant is demanding payment. In this case there is no record of a written notice of claim from Elm Creek to State Farm.[6]

Such a construction appears implicit from our conclusions in *Blehr*. We determined the letter in *Blehr* satisfied the requirement to allow the noticed party to determine its potential liability because it contained "evidence of [the injured party's] intent to make a claim against [the] estate, and ultimately against [the] automobile liability insurer." *Blehr*, 955 N.W.2d at 621. The effect of the letter was the insurer was reasonably on notice that the injured party "was making a claim for damages as a result of the accident and that the insurer, based upon the information in the letter and in its claim file, was sufficiently notified of its potential liability to [the injured party]." *Id.* The insurer in *Blehr* would not

[6] We acknowledge that the notice-of-loss report generated by State Farm states: "We received a report" but that may merely have been a phone call from Elm Creek to State Farm. The statute requires a "written" notice of claim," and as we previously have stated, there is no such document from Elm Creek to State Farm in the record.

reasonably have been on notice of a claim if the potential claimant had not sent the letter demanding such information.

Unlike the letter at issue in *Blehr*, the notice-of-loss report here is a document generated entirely by the insurer. The notice was sent from an insurer to its insured simply acknowledging the initiation of a claim under its own insurance policy. Such a document is not a demand for payment from Elm Creek to State Farm. Were we to conclude otherwise, it would discourage insurers from communicating with their insureds by making routine communications regarding the initiation and status of claims a source of potential liability in preaward interest should a future dispute arise.[7] Accordingly, the September 2017 notice-of-loss report does not constitute a "written notice of claim" sufficient to trigger the accrual of preaward interest under Minn. Stat. § 549.09, subd. 1(b).

B. Elm Creek is entitled to preaward interest that began accruing on June 5, 2019.

State Farm contends that Elm Creek is not entitled to preaward interest because the appraisal award was closer to its October 2017 estimate of the losses, which it argues is a written offer of settlement under the statute. The preaward interest statute provides that "[I]f either party serves a written offer of settlement . . . [t]he prevailing party shall receive interest on any judgment or award from the time of commencement of the action or a

[7] We are also reluctant to in effect absolve Elm Creek from its burden as the moving party to prove it is entitled to preaward interest. A moving party may do so either by producing its "written notice of claim" or demonstrating that it filed a complaint or made a demand for arbitration. Minn. Stat. § 549.09, subd. 1(b). The moving party must thus affirmatively demonstrate that it made a demand for payment or initiated a legal proceeding. An internal document generated by an insurer is not a demand for payment made by the insured.

demand for arbitration . . . until the time of . . . award . . . only if the amount of its offer is closer to the judgment or award than the amount of the opposing party's offer." Minn. Stat. § 549.09, subd. 1(b). The district court determined State Farm's October 2017 estimate was not a written offer of settlement, and it did not err in that determination.

A valid offer of settlement "must be in writing and must offer, in sufficiently clear and definite terms, to dispose completely the claims between the negotiating parties." *Hogenson v. Hogenson*, 852 N.W.2d 266, 275 (Minn. App. 2014). The payment made on October 31, 2017, was for the ACV of the loss because it deducted the value of depreciation. The summary of loss included with the payment states: "Your policy may provide for additional payments on a replacement cost basis for the Recoverable Depreciation listed above . . . . Please refer to your policy for specific time limits and additional settlement provisions." The various summaries for each specific building also include the provision "ALL AMOUNTS PAYABLE ARE SUBJECT TO THE TERMS, CONDITIONS AND LIMITS OF YOUR POLICY." And the policy provides that "[i]n the event you elect to have loss settled on an actual cash value basis, you may still make a claim on a replacement cost basis if you notify us of your intent to do so within 180 days after the loss." Because the policy and the documents included in the estimate make plain that even if Elm Creek accepted the ACV payment, it could later make claims for additional money on an RCV basis, the October 2017 estimate did not purport to "dispose completely the claims between the negotiating parties." *Id*. Elm Creek is thus not barred from receiving preaward interest because State Farm did not make a valid offer of settlement.

But because the September 2017 notice-of-loss report generated by State Farm does not constitute a written notice of claim to State Farm, the amount of interest as calculated by the district court is incorrect. In the absence of a written notice of claim by Elm Creek, the next date on which interest may begin to accrue is either "the time of the commencement of the action or a demand for arbitration." Minn. Stat. § 549.09, subd. 1(b). Insurance appraisals are not arbitration proceedings subject to the Minnesota Uniform Arbitration Act. *See Oliver*, 939 N.W.2d at 754 ("We hold that the Minnesota Uniform Arbitration Act . . . does not apply to the appraisal process . . . ."). Thus, the date upon which preaward interest began to accrue is the "time of the commencement of the action." Minn. Stat. § 549.09, subd. 1(b). Elm Creek served its complaint on State Farm on June 5, 2019. Elm Creek is entitled to preaward interest that began accruing on June 5, 2019.

C. The district court did not err by awarding preaward interest on the RCV appraisal award.

State Farm also argues that the district court erred by awarding interest on the higher RCV amount in the appraisal award. The preaward interest statute "unambiguously provides for preaward interest on all awards of pecuniary damages that are not specifically excluded by the statute." *Poehler v. Cincinnati Ins. Co.*, 899 N.W.2d 135, 141 (Minn. 2017). One category of specifically excluded damages is "judgments or awards for future damages." Minn. Stat. § 549.09, subd. 1(b)(2). State Farm argues that the RCV appraisal award is equivalent to "future damages" because State Farm is not obligated to pay replacement cost for losses until the insured makes the repairs. We disagree.

Several courts have recently touched on the issue of whether preaward interest is available for an award of replacement cost benefits. The *Poehler* court noted that interest may begin to accrue "months or even years before the payment is due" on an insurance claim. 899 N.W.2d at 143. Local federal courts have interpreted this language to "require[] that the depreciation holdback be included in the interest computation"—in other words, that interest is to be calculated on an amount that does not deduct for depreciation, such as RCV—because "a contract provision governing when payment on a claim is due does not limit the availability of pre-award interest." *Creekview of Hugo Ass'n v. Owners Ins. Co.*, 386 F. Supp. 3d 1059, 1071 (D. Minn. 2019). Another federal court addressed the specific question of whether an RCV award constitutes future damages, and it determined that "[t]he RCV award does not compensate [the insured] for a loss that he will suffer in the future; the RCV award compensates [the insured] for a loss" that the insured suffered in the past. *Selective Ins. Co. of S.C. v. Sela*, 455 F. Supp. 3d 841, 870 (D. Minn. 2020). The *Sela* court also cited *Poehler* when stating that "[t]he fact that the terms of [the] insurance policy do not provide for payment of the full RCV award until [the insured] completes repairs is not relevant to when interest began to accrue on the RCV award." *Id.*

Although we are not bound by these federal decisions, we find them persuasive. That the insurance policy dictates when State Farm must issue payment on replacement cost benefits does not dictate when preaward interest begins to accrue on an RCV award, which may be "months or even years before the payment is due." *Poehler*, 899 N.W.2d at 143. Moreover, "[f]uture damages" identifies an award made for damages which, as proven "to a reasonable certainty," will occur in the future. *Pietrzak v. Eggen*, 295 N.W.2d

504, 507 (Minn. 1980). In contrast, RCV identifies an amount of money equivalent to the cost to replace a loss that has already occurred. Because the loss occurred on June 11, 2017, and RCV is meant to compensate for expenses incurred to repair the damages suffered in that loss, the RCV award does not constitute the "future damages" excluded by the statute. The district court did not err in awarding preaward interest based on RCV.

D. State Farm is entitled to an offset for its October 2017 payment.

Lastly, Elm Creek contends that offsetting the total amount of preaward interest by prior payments State Farm made is erroneous. But the purpose of preaward interest is to "compensate prevailing parties for the true cost of money damages incurred." *Blehr*, 955 N.W.2d at 618. Elm Creek was deprived of the full value of the RCV appraisal award until it was paid, but it was not deprived of all money damages until that time. State Farm paid Elm Creek $75,530.08 on October 31, 2017. Elm Creek was entitled to accept this payment without sacrificing its rights to replacement cost benefits under the policy. Accordingly, Elm Creek was not deprived of the use of this $75,530.08 during the time preaward interest was accruing, and State Farm is entitled to an offset in that amount. *See Creekview*, 386 F. Supp. 3d at 1072 (stating that the purpose of interest is to "compensat[e] the plaintiff for the loss of use of the money," and that "[o]nce [the insurer] made its initial payment . . . [the insured] . . . needs no compensation for the loss of [that payment's] use.").

DECISION

Because the insurance policy does not prohibit "harvesting" as a means of repair, the appraisal panel did not exceed the scope of its authority, and Elm Creek was provided the requisite due process, we affirm the grant of summary judgment to State Farm. And

because Elm Creek is entitled to preaward interest with an offset for State Farm's prior payments, we affirm in part the district court's decision on preaward interest. But because the notice-of-loss report generated by State Farm does not constitute a "written notice of claim," we reverse in part and remand to recalculate the amount of preaward interest with June 5, 2019, as the date interest began to accrue.

Affirmed in part, reversed in part, and remanded.